

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7490 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAVIRSINH KALYANSINH @ KAYAMSINGH BHADORIA (RAJPUT)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 21st August, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 1 of Section 3 of

the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. Learned advocate Mr. Patel has appeared for the petitioner and has challenged the impugned order of detention on several grounds. Of all the contentions raised by Mr. Patel, the one that appeals to me is that the document vital to the defence of the petitioner has not been supplied to the petitioner alongwith the order of detention and the grounds thereof. The order of detention is made against the petitioner on account of his bootlegging activities. It is alleged that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act and his activities are prejudicial to the maintenance of public order. In the offence registered against the petitioner on 26th June, 1998, some 875 litres of country-made liquor was recovered from the residence of the petitioner. Under his representation, the petitioner had demanded a copy of the report of the Chemical Analyst which has not been furnished to the petitioner, either alongwith the grounds of detention or even after his demand. The stock answer to this contention that I find from the affidavit made on behalf of the Government is, 'all the documents relied upon by the detaining authority, while passing the order of detention, have been supplied to the detenu alongwith the grounds of detention. Hence, the question of supplying copy of documents, such as report of Chemical Analyst, etc., which were neither considered nor relied upon by the detaining authority does not survive.' I am afraid this is not the answer which is expected of the detaining authority or the State Government. If the material seized from the petitioner's residence were sent to the Chemical Analyst and if such a report of the Chemical Analyst is received then it is the bounden duty of the detaining authority to provide a copy thereof to the detenu, irrespective of the fact whether the detaining authority relies upon such report or not. It is one thing that material seized is sent to the Chemical Analyst but the report is not received, and on the other hand such material has been sent to the Chemical Analyst, the report thereof is received but is not supplied to the detenu, only because it is not relied upon. The affidavit does not disclose whether the material seized was sent to the Chemical Analyst or not and if sent for analysis, whether such report was received or not. The only inference that can be drawn from the statement made in the affidavit reproduced hereinabove is that the material is sent for chemical analysis and the report thereof is also received. Even after receiving the report, it is not relied upon by the detaining authority,

the inference would be that the report is favourable to the detenu. If that be so, it is all the more necessary that a copy thereof should be supplied to the detenu. Since neither the detaining authority nor the State Government has categorically stated that such a report is not in existence, I presume that such report is in existence. In that case, the report of the Chemical Analyst becomes a vital document and it is necessary that the detaining authority should supply a copy thereof to the petitioner. In absence of the said document, the petitioner has been deprived of his right to make effective representation against the order of detention. The action of the respondents thus being violative of the constitutional mandate contained in Article 22 (5), the impugned order of detention is vitiated.

For the reasons recorded hereinabove, the petition is allowed. The impugned order dated 21st August, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*